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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,592	11/18/2003	Donald E. Weder	8404.000	4729

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EXAMINER

PALO, FRANCIS T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/715,592

Applicant(s)

WEDER, DONALD E.

Examiner

Francis T. Palo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/18/03</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Kunststoff (BE 654,427) in view of Applicant's IDS Statement

(Section-3. *Statements as to Information Not Found in Patents or Publications*).,

and De Klerk (US 5,228,234).

Regarding **claim-1**:

A plant package and method of construction are cited in the instant independent claim.

Kunststoff '427 depicts a preformed flexible sleeve having open upper and lower ends, a frusto-conical shape, and a skirt portion (generally the sleeve portion above the disposed pot).

Kunststoff discloses fusing polypropylene trapezoidal cuttings in the first paragraph of the translation on page-2 (read as: "continuously sealed from the upper end to the closed lower end", as cited),

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and further discloses decoration of the upper edge

(page-2, second paragraph) and decoration(s), "in order for the pot to be hidden",

(page-2, first paragraph).

Kunststoff is silent as to a closed lower end and a plurality of curved portions in the upper end.

The Applicant discloses in the Section-3 statement, that plant sleeves are old in the art, typically constructed of polymer film, and trapezoidally shaped with open tops and closed bottoms; further disclosed as prior art is the deposition of a pot in the plant sleeve (cited method), and removable upper portions via perforations.

The Applicant further discloses it is old in the art to secure sleeves about a pot with an elastic band.

Essentially, the Applicant teaches the instant plant package as prior art, in the Section-3 statement.

It would have been obvious therefore, to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Kunststoff to have a closed bottom as cited in the instant claim and as taught by the Applicant's Section-3 statement of prior art, for the known advantages of that feature.

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Kunststoff as modified still lacks a plurality of curved portions as cited in the instant claim.

De Klerk '234 is relied upon for the obviousness of a plurality of curved portions in the sleeve upper end (Figure-3), as cited in the instant claim.

It would have been obvious therefore, to one of ordinary skill in the art at the time the invention was made, to have further modified the sleeve of Kunststoff to have a plurality of curved portions in the sleeve upper end, as cited in the instant claim and as taught by De Klerk, for the known aesthetic advantages of that feature.

Regarding claim-2:

The discussion above regarding claim-1 is relied upon.

Kunststoff and the Applicant's Section-3 statement disclose polymeric film construction material.

Regarding claim-3:

The discussion above regarding claim-1 is relied upon.

Kunststoff discloses, "the sleeves may be made from a thin sheet", in the last paragraph of the page-2 translation; therefore, a thin sheet is read as capable of the thickness range cited in the instant claim.

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Regarding **claim-4**:

The discussion above regarding claim-1 is relied upon.

Kunststoff as modified, and the Applicant's prior art statement render obvious the obviousness of a sleeve securing element as cited.

Regarding **claim-5**:

The discussion above regarding claim-1 is relied upon.

Kunststoff discloses the flower pot is placed on a shelf of a support and sleeved; removal from the support device, as cited in the instant claim, would be inherent to the sleeving as taught by Kunststoff.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wagner 'D279 teaches a sleeve readable on the instant claim, but lacks a pot and floral grouping disposed within.

Gelder 'DE464 reinforces the Applicant's "old in the art" plant sleeve disclosure.

Landau '782 teaches a trapezoidal plant sleeve having a closed bottom and curved upper end.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on M-Tu., Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Francis T. Palo
Examiner
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